

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52166; File No. SR-BSE-2005-34)

July 29, 2005

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend a Pilot Program Relating to Boston Options Exchange Trading Rules Regarding Market Opening Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 28, 2005, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ the Exchange has designated this proposal as “non-controversial,” which renders the proposed rule change effective immediately upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program (“Pilot Program”) for a provision of its Boston Options Exchange (“BOX”) trading rules regarding its market opening procedures for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See also discussion infra Section III.

one year through August 6, 2006. The text of the proposed rule change is available on the Exchange's Web site (www.bostonstock.com), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for a section of the Rules of the Boston Options Exchange (the "BOX Rules") relating to opening the market until August 6, 2006. Chapter V, Doing Business on BOX, Section 9, Opening the Market, establishes guidelines regarding market opening procedures ("Market Opening Rules"). On February 4, 2004, the Commission approved the guidelines, as set forth in the BOX Rules, on a pilot basis through August 6, 2004⁶ and extended the Pilot Program for another year on August 6, 2004.⁷ The Exchange now seeks to extend the pilot for another year, until August 6, 2006.

⁶ See Securities Exchange Act Release No. 49192 (February 4, 2004), 69 FR 7051 (February 12, 2004) (SR-BSE-2004-05).

⁷ See Securities Exchange Act Release No. 50163 (August 6, 2004) 69 FR 50230 (August 13, 2004) (SR-BSE-2004-28).

According to the BOX Market Opening Rules, for a period of at least one hour prior to the start of trading each day, the BOX Trading Host is in Pre-Opening Phase. During the Pre-Opening Phase, Options Participants are able to enter, modify and cancel orders and quotes, as well as Limit Orders from previous trading sessions which are still valid (e.g. “Good Till Cancelled” orders) that are automatically brought to the new Pre-Opening Phase and are available for modification and cancellation. A Theoretical Opening Price (“TOP”), which is the price which would be the opening price if the Opening Match were to occur at that moment, is calculated and broadcast continuously to all BOX Options Participants during the Pre-Opening Phase; however, no orders are matched, nor trades executed until the primary market opens for each underlying security. At that point, an Opening Match is conducted, and any orders or quotes remaining on the BOX Book after the Opening Match are accessible for modification or cancellation during regular trading.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

⁸ 15 U.S.C 78f(b).

⁹ 15 U.S.C 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the Pilot Program to continue to operate

without interruption after it would have otherwise expired on August 6, 2005. The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to continue to provide standardized market open procedures for BOX that the Exchange can surveil, enforce, and continue to evaluate without interruption through August 6, 2006.¹⁰ For this reason, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2005-34 on the subject line.

¹⁰ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File No. SR-BSE-2005-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-BSE-2005-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).